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Tawkify, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

JEREMY STANFIELD, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

TAWKIFY, INC. and DOES 1-25,

Defendants.

Case No. 3:20-cv-07000-WHA

**UNREDACTED VERSION OF
DOCUMENT SOUGHT TO BE
SEALED**

**TAWKIFY, INC.'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFF'S
MOTION TO REMAND**

[Filed concurrently with Declaration of
Kellie Ammerman in support of
Tawkify's Opposition; [Proposed] Order]

Date: November 19, 2020
Time: 8:00 a.m.
Ct rm: 12, 19th Floor

Judge William H. Alsup

1 **I. Introduction**

2 Plaintiff Jeremy Stanfield (“Plaintiff”) challenges this Court’s jurisdiction on the ground
3 that Tawkify, Inc.’s (“Tawkify”) removal notice and its plausible allegations based on the
4 Complaint do not suffice to establish removal jurisdiction over this matter under the Class Action
5 Fairness Act (“CAFA”). Plaintiff is mistaken.

6 First, a notice of removal need only contain a short and plain statement of the grounds for
7 removal and may rely on the allegations of the complaint to establish that the amount in
8 controversy under CAFA has been met. Tawkify did just that. A plain reading of Plaintiff’s
9 Complaint confirmed that the putative class at issue here is *at least* two thousand persons. (*See*
10 Compl. ¶ 42 noting that “thousands” of consumers have purchased Tawkify’s services in the
11 relevant period.) Plaintiff also alleged that his claims were typical of the putative class and that
12 he, as proposed class representative, suffered damages of at least \$3,700, which does not include
13 the alleged treble damages to which he (and the putative class) is entitled. Whether Plaintiff’s
14 damages are trebled across a potential class of two thousand persons or not, but particularly if they
15 are trebled, on the face of the Complaint the CAFA jurisdictional threshold was met.

16 Second, until the jurisdictional amount has been challenged either by the Court or by
17 Plaintiff in a motion to remand, Tawkify had no obligation to provide additional evidentiary
18 support (*e.g.*, a declaration) to establish that the CAFA threshold had been met. Plaintiff’s
19 allegation in the Complaint that the CAFA jurisdictional threshold had not been met was self-
20 serving, conclusory, and inconsistent with other allegations in the Complaint. Tawkify was
21 entitled to rely on the allegations of the Complaint that supported CAFA jurisdiction.

22 Third, now that Plaintiff has moved to remand, Tawkify offers the additional evidentiary
23 support that until now was not required to be submitted, which further establishes that Plaintiff has
24 placed more than \$5,000,000 in controversy through his allegations and claims for relief in the
25 Complaint. Specifically, over the purported class period (2016-2020), Tawkify has had at least
26 17,000 clients nationwide who have, on average, purchased services amounting to at least five
27 hundred dollars (\$500) per client. That more than adequately meets the CAFA jurisdictional
28 threshold. Plaintiff’s motion for remand, therefore, should be denied.

1 **II. Statement of Issues Pursuant to L.R. 7-4(a)**

2 Whether Tawkify has met its evidentiary burden in opposition to Plaintiff's motion to
3 remand by demonstrating that Plaintiff has placed more than \$5,000,000 in controversy.

4 **III. Facts Relevant to Removal Under CAFA**

5 Tawkify has provided matchmaking services to more than 17,000 clients across the United
6 States in approximately the past four years. *See* Declaration of Kellie Ammerman ("Ammerman
7 Decl."), ¶ 4. On average, Tawkify's clients purchased services amounting to at least five hundred
8 dollars (\$500) per client for matchmaking services from 2016 through September 8, 2020. *Id.*, ¶ 5.

9 Plaintiff alleges a putative nationwide class in the "thousands." Compl. ¶¶ 41-42. For this
10 putative class, Plaintiff claims entitlement to "full and complete restitution of all amounts
11 collected from Class members," including treble damages. *Id.* ¶¶ 5, 68.

12 **IV. Tawkify Has Provided Evidence that Plaintiff's Allegations Placed More than**
13 **\$5,000,000 in Controversy**

14 Under CAFA, federal courts have original jurisdiction over putative class actions where
15 there are at least 100 class members, at least one plaintiff is diverse in citizenship from any
16 defendant, and the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.
17 *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015); 28 U.S.C. § 1332(d).
18 Plaintiff challenges the amount in controversy in Tawkify's Notice of Removal [ECF No. 1]. *See*,
19 *e.g.*, Mot. at 3:17-26. Plaintiff's challenge is belied by both the allegations of his Complaint and
20 the evidence Tawkify now offers.¹

21 First, a notice of removal need only contain a short and plain statement of the grounds for
22 removal. *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 925 (9th Cir. 2019). Allegations in a
23 complaint that on their face reveal that the jurisdictional threshold has been met suffice. *See*

24 _____
25 ¹ Plaintiff's counsel attached email correspondence amongst counsel for the parties and
26 misconstrued that correspondence in its motion to remand. *See* Mot. at 4:2-4. At no time did
27 Tawkify's counsel "threaten" Plaintiff's counsel regarding Tawkify's intent to reserve its rights to
28 recover any and all relief to which it would be entitled for unnecessary motion practice. A plain
reading of the email correspondence confirms this fact, as well as the fact that it was Plaintiff's
counsel who first raised the prospect of seeking fees in connection with these issues. *See*
Schreiber Decl., Exh. C.

Ibarra, 775 F.3d at 1197; *see also Lokey v. CVS Pharmacy, Inc.*, No. 20-cv-04782-LB, 2020 WL 5569705, *4 (N.D. Cal. Sept. 17, 2020) (holding that a plaintiff who identifies restitution as a theory of recovery and alleges facts indicating an intent to seek a full refund has provided the necessary facts for a plausible allegation of the amount in controversy). This is true even when, as here, the complaint contains conclusory allegations that the CAFA jurisdictional threshold has not been met. *See Lokey*, 2020 WL 5569705, at *6 (“The plaintiff cannot limit [his] damages and thereby bind the class, especially given that the complaint was silent about the amount in controversy.”).

A plain reading of Plaintiff’s Complaint, however, confirmed that the putative class at issue here is *at least* two thousand persons. *See* Compl. ¶ 42 (noting that “thousands” of consumers have purchased Tawkify’s services in the relevant period). In his motion, Plaintiff claims that Tawkify somehow performed improper “arithmetic” to arrive at a class size and amount in controversy that plausibly meets the CAFA jurisdictional amount. *See* Mot. at 3:17-24. The opposite is true. Tawkify relied on the number of putative class members Plaintiff proffered (*i.e.*, “thousands” amounts to at least two thousand) and Plaintiff’s allegation that his claims are “typical” of the putative class—and he, as proposed class representative, suffered damages of at least \$3,700, which does not include the alleged treble damages to which he (and the putative class) is entitled. *See* Compl. ¶¶ 5, 44. Whether Plaintiff’s damages are trebled across a potential class of two thousand persons or not, but particularly if they are trebled, on the face of the Complaint the CAFA jurisdictional threshold was met.²

Second, when the plaintiff challenges federal court jurisdiction in a motion to remand, as Plaintiff has now done here, the removing defendant may *then* produce evidence outside the complaint, including affidavits, declarations, and other summary-judgment-type evidence. *Ibarra*, 775 F.3d at 1197. To assess the amount in controversy, the removing defendant may rely on “a chain of reasoning that includes assumptions.” *Id.* at 1199. A removing defendant need only show that jurisdictional damages are “possible” not that they are “probable.” *See Greene v.*

² Tawkify disputes that Plaintiff, and the putative class, is entitled to any relief or damages, and expressly reserves the right to challenge the merits of Plaintiff’s (or the putative class’) claims at the appropriate time.

1 *Harley-Davidson, Inc.*, 965 F.3d 767, 773 (9th Cir. 2020). As set forth in Tawkify’s President’s
 2 supporting declaration, the Complaint places far more than \$5,000,000 in controversy here. *See*
 3 Ammerman Decl., ¶ 5. Plaintiff seeks “full and complete restitution of all amounts collected” by
 4 Tawkify from the putative nationwide class from 2016 to judgment. Compl. ¶¶ 41, 68. Based on
 5 Ms. Ammerman’s declaration, the Court can reasonably infer that more than \$5,000,000 for the
 6 relevant period is in controversy, because an average of at least \$500 per client would be at least
 7 \$8,500,000 in controversy.

8 While Tawkify disputes that Plaintiff, and the putative class, suffered any damages,
 9 Tawkify has nevertheless met its jurisdictional burden under CAFA at this stage. *See Frederick v.*
 10 *Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1247-48 (9th Cir. 2012) (finding jurisdiction
 11 established where the defendant showed facts that made it merely “possible” that certain damages
 12 were “in play”).

13 **V. Conclusion**

14 For the foregoing reasons, Tawkify respectfully requests that the Court deny Plaintiff’s
 15 motion to remand. *See Salter v. Quality Carriers, Inc.*, 974 F.3d 959, 964-65 (9th Cir. 2020)
 16 (holding that, absent evidentiary submissions by the plaintiff, the district court must accept all
 17 allegations in the removal notice as true and draw all reasonable inferences in the removing
 18 defendant’s favor to assess the sufficiency of the allegations “as a legal matter to invoke the
 19 court’s jurisdiction”).

20 Dated: November 2, 2020

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Jahmy S. Graham

Jahmy S. Graham
 Crispin L. Collins
 Nick Ladin-Sienne

Attorneys for Defendant
 Tawkify, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2020, I electronically filed the forgoing with the Clerk of court using the CM/ECF system and I served a copy of the forgoing pleading on all counsel for all parties via the CM/ECF system and/or mailing same by United States Mail, properly addressed, and first class postage prepaid, to all counsel of record in this matter.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed November 2, 2020 at Torrance, California.

Jenny Prado

Print Name

By: /s/ Jenny Prado

Signature